

Regular Session, 2010

HOUSE BILL NO. 702

BY REPRESENTATIVE LEGER

(On Recommendation of the Louisiana State Law Institute)

JUVENILES/DELINQUENTS: Provides with respect to delinquency procedures

1 AN ACT

2 To amend and reenact Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A)
3 and (C), 855(B)(7), 858(B), 860(A), (B), and (D), and 867(A) and (C) and to enact
4 Children's Code Articles 841(D), 867(E), 869.3(E), and 884.1, relative to the
5 continuous revision of the Children's Code; to provide for divestiture of juvenile
6 court jurisdiction; to provide for criminal court jurisdiction; to provide for
7 definitions; to provide for advice of rights; to provide for notice of a motion to
8 transfer; to provide for sex offender registration and notification requirements; to
9 provide for confidentiality; to provide for informal adjustment agreements; to
10 provide for certain types of medical examinations in motions to transfer and in
11 adjudication hearings; to provide for the report of the sanity commission; and to
12 provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and
15 (C), 855(B)(7), 858(B), 860(A), (B), and (D), and 867(A) and (C) are hereby amended and
16 reenacted and Children's Code Articles 841(D), 867(E), 869.3(E), and 884.1 are hereby
17 enacted to read as follows:

1 Art. 305. Divestiture of juvenile court jurisdiction; original criminal court
2 jurisdiction over children; when acquired

3 A.(1) When a child is fifteen years of age or older at the time of the
4 commission of first degree murder, second degree murder, aggravated rape, or
5 aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile
6 court until either:

7 * * *

8 (b) The juvenile court holds a continued custody hearing pursuant to Articles
9 819 and 820 and finds probable cause that he committed one of these offenses,
10 whichever occurs first. During this hearing, when the child is charged with
11 aggravated rape, the court shall inform him that if convicted he shall register as a sex
12 offender for life, pursuant to Chapter 3-B of Title 15 of the Louisiana Revised
13 Statutes of 1950.

14 * * *

15 B.(1) When a child is fifteen years of age or older at the time of the
16 commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he
17 is subject to the exclusive jurisdiction of the juvenile court until whichever of the
18 following occurs first:

19 * * *

20 (b) The juvenile court holds a continued custody hearing and finds probable
21 cause that the child has committed any of the offenses listed in Subparagraph (2) of
22 this Paragraph and a bill of information charging any of the offenses listed in
23 Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is
24 charged with forcible rape or second degree kidnapping, the court shall inform him
25 that if convicted he shall register as a sex offender for life, pursuant to Chapter 3-B
26 of Title 15 of the Louisiana Revised Statutes of 1950.

27 * * *

1 Comment - 2010

2 Chapter 3-B of Title 15 requires registration as a sex offender for any
3 juvenile who was transferred to adult court and has pled guilty or has been convicted
4 after trial of second degree kidnapping, aggravated rape, or forcible rape.

5 * * *

6 Art. 804. Definitions

7 As used in this Title:

8 * * *

9 (3) "Delinquent act" means an act committed by a child of ten years of age
10 or older which if committed by an adult is designated an offense under the statutes
11 or ordinances of this state, or of another state if the ~~act~~ offense occurred ~~in another~~
12 ~~state~~ there, or under federal law, except traffic violations. It includes an act
13 constituting an offense under R.S. 14:95.8 and a direct contempt of court committed
14 by a child.

15 * * *

16 Comment - 2010

17 This revision shifts the illegal possession of a firearm offense from the
18 category of FINS cases to delinquency cases. This revision corrects a long standing
19 anomaly and follows the recent ruling in State ex rel. D.J., 5 So.3d 923 (La.Ct.App.
20 4th Cir. 2009).

21 * * *

22 Art. 841. Effect of agreement

23 A. An informal adjustment agreement shall not be considered an
24 adjudication. Evidence of the existence of ~~such~~ an agreement shall not be used
25 against the child over objection in any adjudication hearing or criminal trial. ~~Such~~
26 That evidence may be used in a disposition hearing in the juvenile court or for the
27 purpose of a presentence investigation after a criminal conviction.

28 * * *

29 C. Any incriminating statement made by the child to the person giving
30 counsel or advice and in the discussions or conferences incident to the informal
31 adjustment agreement shall not be used against the ~~declarant~~ child, over objection,
32 in an adjudication hearing or criminal trial. ~~Any such~~ The incriminating statement

1 may be used in a disposition hearing in the court or for the purpose of a presentence
2 investigation after a criminal conviction.

3 D. If any medical, mental health, sensory, or special competency evaluation
4 is performed during the period of an informal adjustment agreement, the report shall
5 not include any incriminating statement made by the child. The examination shall
6 not occur until five days after the clerk of court has given notice to all parties of the
7 examination order. Any incriminating statement made by the child to the evaluator,
8 which would violate the child's privilege against self-incrimination, shall not be used
9 against him in any future court proceedings, adjudication hearing, or later criminal
10 trial.

11 * * *

12 Art. 855. Advice of rights at appearance to answer

13 * * *

14 B. If the child is capable, the court shall then advise the child of the
15 following items in terms understandable to the child:

16 * * *

17 (7) The possible consequences of his admission that the allegations are true,
18 including the maximum and minimal dispositions which the court ~~might~~ may impose
19 pursuant to Articles 897 through 900. In addition, if the child is fourteen years of
20 age or older and the petition charges the child with the perpetration, attempted
21 perpetration, or conspiracy to commit any of the following offenses, the court shall
22 inform the child that, if he admits to allegations of the petition, or the allegations of
23 the petition are found to be true, he may be required to register as a sex offender
24 pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, and
25 the court shall inform the child regarding applicable required registrations and their
26 duration:

27 (a) Aggravated rape as defined in R.S. 14:42.

28 (b) Forcible rape as defined in R.S. 14:42.1.

29 (c) Second degree sexual battery as defined in R.S. 14:43.2.

(d) Aggravated kidnapping of a child who has not attained the age of thirteen
years pursuant to R.S. 14:44 or 44.2.

3 (e) Second degree kidnapping of a child who has not attained the age of
4 thirteen years as defined in R.S. 14:44.1.

5 (f) Aggravated incest involving circumstances defined by R.S. 14:78.1 as an
6 aggravated offense.

7 (g) Aggravated crime against nature as defined in R.S. 14:89.1.

8 Comment - 2010

This is an amplification of the *Boykin* and "Adam Walsh" requirement that an accused be informed by the court of the maximum dispositions that may be imposed should he be convicted. After Louisiana enacted an "Adam Walsh" statute, Chapter 3-B of Title 15, conviction of a juvenile offender for certain sex offenses became a very serious matter with life-altering consequences. Registration is required for juvenile offenders who are transferred to criminal court and found guilty or who pleaded guilty to certain offenses. The revision to Subparagraph (7) lists the age and offense requirements of R.S. 15:542(A)(3). Adjudication for an "aggravated offense", as defined in R.S. 15:541(2) requires lifetime registration and quarterly in-person registration renewals.

19 * * *

20 Art. 858. Motion for transfer; notice

21 * * *

B. Notice in writing of the time, place, and purpose of the hearing must shall
be given to the child and his parents and other custodian, if any, at least ten days
before the hearing. In addition, if the petition charges the child with second degree
kidnapping, aggravated rape, or forcible rape, the court shall inform the child
regarding the applicable registration and duration requirements in Chapter 3-B of
Title 15 of the Louisiana Revised Statutes of 1950.

28 Comment - 2010

29 R.S. 15:541(2) requires registration for any juvenile who was transferred to
30 criminal court, pursuant to Article 857, and thereafter convicted or pleaded guilty to
31 any of these three offenses.

32 * * *

33 Art. 860. Medical, sensory, psychological, and psychiatric examinations

34 A. On its own motion or on the motion of the child or district attorney, the
35 court may order any child subject to a motion to transfer to be examined by a

1 physician, optometrist, audiologist, psychologist, or psychiatrist. The examination
2 shall not occur until five days after the clerk of court has notified all parties of the
3 examination order.

4 B. Any examination shall be made and the findings submitted to the court
5 within three days of the transfer hearing. ~~Such~~ This time period may be extended by
6 the court for good cause.

7 * * *

8 D. ~~Unless the child has sought the examination or otherwise waives his~~
9 ~~privilege against self-incrimination, neither testimony about the report nor any of its~~
10 ~~contents is admissible in an adjudication hearing or later criminal trial, if any, which~~
11 ~~would violate the child's privilege against self-incrimination.~~ The report shall not
12 include any incriminating statement made by the child. Any incriminating statement
13 made by the child to the evaluator, which may violate the child's privilege against
14 self-incrimination, shall not be used against him in any future court proceedings,
15 adjudication hearing, or later criminal trial.

16 * * *

17 Art. 867. Medical, sensory, psychological, and psychiatric examinations

18 A. On its own motion or on the motion of the child or district attorney, the
19 court may order any child ~~concerning whom a petition has been filed~~ to be examined
20 by a physician, optometrist, or audiologist. The examination shall not occur until
21 five days after the clerk of court notified all parties of the examination order.

22 * * *

23 C. Any examination ~~as herein provided~~ shall be made and the findings
24 submitted to the court within thirty days of the date the order is entered. ~~Such~~ This
25 time period may be extended by the court for good cause.

26 * * *

27 E. The report shall not include any incriminating statement made by the
28 child. Any incriminating statement made by the child to the evaluator, which may

1 violate the child's privilege against self-incrimination, shall not be used against him
2 in any future court proceedings, adjudication hearing, or later criminal trial.

3 * * *

4 Art. 869.3. Report of sanity commission; content; filing

5 * * *

6 E. The report shall not include any incriminating statement made by the
7 child. Any incriminating statement made by the child to the evaluator, which may
8 violate the child's privilege against self-incrimination, shall not be used against him
9 in any future court proceedings, adjudication hearing, or later criminal trial.

10 * * *

11 Art. 884.1. Informing the child of sex offender registration and notification
12 requirements; form

13 A. When the child has admitted the allegations of the petition or when
14 adjudicated delinquent for any of the following offenses, the court shall provide him
15 with written notice of the requirements for registration as a sex offender:

16 (1) Aggravated rape as defined in R.S. 14:42.

17 (2) Forcible rape as defined in R.S. 14:42.1.

18 (3) Second degree sexual battery as defined in R.S. 14:43.2.

19 (4) Aggravated kidnapping of a child who has not attained the age of thirteen
20 years pursuant to either R.S. 14:44 or 44.2.

21 (5) Second degree kidnapping of a child who has not attained the age of
22 thirteen years as defined in R.S. 14:44.1.

23 (6) Aggravated incest involving circumstances defined by R.S. 14:78.1 as
24 an aggravated offense.

25 (7) Aggravated crime against nature as defined in R.S. 14:89.1.

26 B. The court shall use this form for the notice:

27 STATE IN THE INTEREST OF _____

28 _____ JUDICIAL DISTRICT COURT

29 DOCKET # _____ PARISH OF _____

DIVISION STATE OF LOUISIANA

Notification to Sex Offender in accordance with Children's Code Article 884.1, this
Court has the duty to provide _____ (name of juvenile) with
the information necessary for awareness of sex offender and child predator
registration requirements. _____ (name of juvenile) has
admitted the allegations of the petition or has been adjudicated of a violation of R.S.
_____. Based on the provisions of Chapter 3-B of Title 15 of the Louisiana
Revised Statutes of 1950 and the substance of the statute violated, IT IS ORDERED
that _____ shall register for the period of _____ from the
date of his release from confinement being placed on aftercare, supervised release
or probation, or from the date of his adjudication, if the disposition does not involve
a term of confinement.

(1) You shall initially register with the sheriff and chief of police, if any, of the parish of the juvenile court in which you were adjudicated. Additionally, you shall update your registration, in person, every ninety days from the date of initial registration, with the sheriff and chief of police, if any, of the parish of your residence and the parish where you attend school or are employed.

18 Within three business days of establishing residence in Louisiana or if a
19 current resident, within three business days after adjudication if not immediately
20 committed to confinement or taken into custody, or within three business days after
21 release from confinement, you shall obtain and provide all of the following
22 information to each sheriff or police department (except in Orleans Parish where
23 registration shall take place with the New Orleans Police Department):

24 (a) Name and any aliases.

25 (b) Physical address or addresses of residence.

26 (c) Name and physical address of place of employment. If you do not have
27 a fixed place of employment, you shall provide information with as much specificity
28 as possible regarding the places where you work, including but not limited to travel
29 routes.

1 (d) Name and physical address of the school in which you are a student.

2 (e) Two forms of proof of residence for each residential address provided,

3 including but not limited to a driver's license, bill for utility service, and bill for

4 telephone service. If those forms of proof are not available, you may provide an

5 affidavit of an adult resident living at the same address.

6 (f) The offense for which you were adjudicated and the date and place of the

7 adjudication, and if known, the court in which the adjudication was obtained, the

8 docket number of the case, the specific statute violated, and the disposition imposed.

9 Note that this information is all contained at the beginning of this form.

10 (g) A current photograph, fingerprints, palm prints, and a DNA sample.

11 (h) Your telephone numbers, including fixed location phone, mobile phone

12 numbers, or telephone number associated with any residence address.

13 (i) A description of every vehicle registered to or operated by you, including

14 license plate number and a copy of your driver's license or identification card.

15 (j) Your social security number and date of birth.

16 (k) A description of your physical characteristics, including but not limited

17 to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or other

18 identifying marks.

19 (l) Every e-mail address, online screen name, or other online identity you use

20 or have used to communicate on the Internet.

21 (m) Temporary lodging information regarding any place where you plan to

22 stay for seven or more days and the length of the planned stay.

23 (n) Travel and immigration documents, including but not limited to passports

24 and documents establishing immigration status.

25 (2) If you are committed to the office of juvenile justice, you shall provide

26 this information to that office within ten days prior to release from confinement.

27 You shall still appear in person at the sheriff's office within three business days of

28 release from confinement.

1 (3) During the declaration of an emergency if you enter an emergency
2 shelter, you shall, within the first twenty-four hours of admittance, notify the
3 management of the shelter, the chief of police of the municipality, and the sheriff of
4 the parish in which the shelter is located of your sex offender status.

5 (4) You have a duty to provide notice of change of address or other
6 registration information to the sheriff of the parish of residence within three business
7 days. If the new or additional residence is located in a different parish, then you
8 shall register with the sheriff of the parish in which the new or additional residence
9 is located. You shall also send written notice within three business days of
10 re-registering in the new parish to the sheriff of the parish of former registration.

11 (5) If you provide recreational instruction to persons under the age of
12 seventeen, you shall post a notice in the building or facility where such instruction
13 is being given.

14 (6) Within ten days prior to release from confinement in a correctional
15 facility, you shall provide a photograph and other relevant information noted in this
16 Article to the office of juvenile justice for purposes of the State Sex Offender and
17 Child Predator Registry.

18 (7) If you change your place of residence or establish a new or additional
19 residence, you shall appear in person at the office of the sheriff of your parish of
20 residence where you are currently registered within three business days of the change
21 to register the new address. If the new address is located in a different parish, then
22 you shall also appear in person at the office of the sheriff of your new parish of
23 residence within the same time period. If your parish of residence is in Orleans
24 Parish, then the registration shall take place at the New Orleans Police Department
25 and not with the Orleans Parish Sheriff.

26 (8) If you are absent from your current address of registration for more than
27 thirty consecutive days or an aggregate of thirty days or more in a calendar year, and
28 are physically present at another address during that same period of time, you shall
29 register the new address in person as one of your addresses of residence. If the new

1 address is in a parish different from your current address, you shall also register in
2 person with the sheriff of the new parish within three business days of the tolling of
3 the time periods listed. This requirement notwithstanding, you shall still notify the
4 sheriff of one of your parishes of residence in person if you are to take up temporary
5 lodging for seven or more days. It is only after the thirty-day limit is exceeded that
6 the new registration shall occur. If your address of residence is in Orleans Parish,
7 this registration update shall take place at the New Orleans Police Department and
8 not with the Orleans Parish Sheriff's Office.

9 (9) You shall also appear in person at the office of the sheriff of any of your
10 parishes of residence when there is a change in your name, place of employment, or
11 enrollment. This appearance shall occur within three business days of the change.
12 If your address of residence is in Orleans Parish, this registration update shall take
13 place at the New Orleans Police Department and not with the Orleans Parish Sheriff's
14 Office.

15 (10) You shall also timely sign and return the periodic address verification
16 form sent to you by the Louisiana Bureau of Criminal Identification and Information
17 according to the instructions on the verification form.

18 (11) You shall update your registration annually on the anniversary of the
19 initial registration by appearing in person at the office of each law enforcement
20 agency with which you are required to register and shall pay an annual registration
21 fee of sixty dollars (\$60.00).

22 (12) Failure to comply with any of these registration and notification
23 requirements is a felony for which you may be punished by a fine of up to one
24 thousand dollars (\$1,000.00) and imprisonment at hard labor for not less than two
25 years nor more than ten years without benefit of parole, probation, or suspension of
26 sentence. Upon a second or subsequent conviction, you may be punished by a fine
27 of up to three thousand dollars (\$3,000.00) and imprisonment at hard labor for not
28 less than five years, nor more than twenty years without benefit of parole, probation,
29 or suspension of sentence.

(13) If you have been adjudicated of a sex offense as defined in R.S. 15:541 involving a victim who was under the age of thirteen at the time of the offense, you are prohibited from residing or being present in certain locations. A copy of this statute is provided to you with this notification, if applicable.

THUS DONE AND SIGNED this _____ day of _____, 20__ in
open court, in _____, Louisiana.

Judge, _____ Juvenile Court

I hereby certify that the above requirements have been explained to me, that

I have received a copy of the above notice of sex offender registration and

notification requirements, and a copy of the statutes providing for such requirements.

I also understand that I will be subject to any changes made by the legislature to the

registration laws from this day forward.

Signature of Juvenile

Defense Counsel Signature

Comment - 2010

The notification form is based on the form provided in R.S. 15:543.1.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leger

HB No. 702

Abstract: Provides for the notice to a child who may face registration as a sex offender and provides for the confidentiality of a child's statement obtained in a competency hearing.

Present law (Ch.C. Art. 305) provides for the jurisdiction of the juvenile court in very serious matters.

Proposed law retains present law and adds that if charged the court shall notify the child of the registration requirements for a sex offender.

Present law (Ch.C. Art. 804(3)) provides for the definition of a delinquent act.

Proposed law retains present law and adds illegal possession of a firearm to the definition which categorizes the action as a delinquency case rather than a FINS case.

Present law (Ch.C. Art. 841) provides that an informal adjustment agreement may not be used against the child over objection. Also provides that an incriminating statement may not be used against the child over objection in an adjudication hearing or criminal trial.

Proposed law retains present law and adds that any medical examination may not occur until the clerk of court gives five-days notice to all parties and any incriminating statement made by the child shall not be used against him in a later proceeding.

Present law (Ch.C. Art. 855(B)(7)) requires the court to determine if a child is capable of understanding statements about his rights and advise him of certain items.

Proposed law retains present law and adds that when the child is charged with certain serious offenses, the court shall notify the child regarding applicable sex offender registration requirements.

Present law (Ch.C. Art. 858) provides for notice to the child of the motion to transfer.

Proposed law retains present law and adds that the court, for certain serious crimes, shall also notify the child of the applicable sex offender registration requirements.

Present law (Ch.C. Art. 860) provides for the examination of the child and that, unless the child waives his privilege against self-incrimination, the testimony about the medical report or its contents may not be used against the child.

Proposed law retains present law but adds that an examination shall not occur until five days after notice to all parties. The report shall not contain any incriminating statement made by the child and it shall not be used against the child.

Present law (Ch.C. Art. 867) provides for certain types of medical examinations of the child.

Proposed law retains present law but adds that an examination shall not occur until five days after notice to all parties. The report shall not contain any incriminating statement made by the child and it shall not be used against the child.

Present law (Ch.C. Art. 869.3) provides for the report of the sanity commission.

Proposed law retains present law and adds that the report shall not include a child's incriminating statement and any such statement made to an evaluator shall not be used against the child.

Proposed law (Ch.C. Art. 884.1) provides that the court shall provide the child with written requirements for registration as a sex offender and provides a form.

(Amends Ch.C. Arts. 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and (C), 855(B)(7), 858(B), 860(A), (B), and (D), and 867(A) and (C); Adds Ch.C. Arts. 841(D), 867(E), 869.3(E), and 884.1)